



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2021-0754; FRL-9514-01-R9]**

**Air Plan Approvals; California; South Coast Air Quality Management District, Imperial and Ventura County Air Pollution Control Districts; Nonattainment New Source Review; 2015 Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve three state implementation plan (SIP) revisions submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). These SIP revisions address the South Coast Air Quality Management District (SCAQMD or “District”), Imperial County Air Pollution Control District (ICAPCD or “District”), and Ventura County Air Pollution Control District (VCAPCD or “District”) portions of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or “Act”) and its implementing regulations.

**DATES:** Comments must be received on or before **[Insert date 30 days after date of publication in the *Federal Register*]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0754, at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Amita Muralidharan, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4140 or by email at [muralidharan.amita@epa.gov](mailto:muralidharan.amita@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## **I. Background and Purpose**

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).<sup>1</sup> Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most

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<sup>1</sup> 80 FR 65292 (October 26, 2015).

recent years of ambient air quality data. This action relates to three California air districts that were designated nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018.<sup>2</sup>

Within the SCAQMD, the South Coast Air Basin was classified as an Extreme ozone nonattainment area and the Coachella Valley Air Basin was classified as a Severe ozone nonattainment area. Within the ICAPCD, Imperial County was classified as a Marginal ozone nonattainment area. Within the VCAPCD, the part of Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands was classified as a Serious nonattainment area.

On December 6, 2018, the EPA issued a final rule entitled “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (“2015 SIP Requirements Rule”) that establishes the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 8-hour ozone NAAQS.<sup>3</sup> Based on the initial nonattainment designations for the 2015 8-hour ozone standards, each district was required to make a SIP revision addressing NNSR no later than August 3, 2021.<sup>4</sup> This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program, or an analysis demonstrating that the existing SIP-approved NNSR permit program meets the applicable 2015 ozone requirements and a letter certifying the analysis.

## **II. The State’s Submittal**

### **A. *What did the State submit?***

Table 1 lists the dates the submitted 2015 Ozone Certification letters addressed by this proposal were adopted by each air district and submitted by the California Air Resources Board

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<sup>2</sup> 83 FR 25776 (June 4, 2018).

<sup>3</sup> 83 FR 62998 (December 6, 2018). The 2015 SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP.

<sup>4</sup> 40 CFR 51.1314.

(CARB), the agency that serves as the governor's designee for California SIP submittals.

**TABLE 1 - SUBMITTED CERTIFICATION LETTERS**

<b>District</b>	<b>Adoption Date</b>	<b>Submittal Date</b>	<b>Cover Letter Date</b>
South Coast AQMD	6/4/2021	8/3/2021	8/3/2021
Imperial County APCD	6/22/2021	8/3/2021	8/3/2021
Ventura County APCD	6/8/2021	8/3/2021	8/3/2021

CARB's August 3, 2021, submittal of the SCAQMD, ICAPCD, and VCAPCD 2015 Certification letters were deemed by operation of law on February 3, 2022, to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. What is the purpose of the submitted certification letters?*

The submittal from each district is intended to satisfy the 2015 SIP Requirement Rule that requires states to make a SIP revision addressing nonattainment new source review. The SIP for each district currently contains approved NNSR permit programs based on their nonattainment classification for the 2008 8-hour ozone NAAQS. The submitted certification letters provide a mechanism for each district to satisfy the 40 CFR 51.1314 submittal requirements based on their 2015 8-hour ozone nonattainment designations. The EPA's analysis of how these SIP revisions address the NNSR requirements for the 2015 8-hour ozone NAAQS is provided below.

**III. Analysis of Nonattainment New Source Review Requirements**

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a nonattainment area and is required under CAA sections 172(c)(5) and 173.

As mentioned in Section I of this document, NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 by the implementation rule for the 2015 8-hour ozone NAAQS.<sup>5</sup> The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are contained in 40 CFR 51.165. These NNSR program

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<sup>5</sup> 83 FR 62998.

requirements include those promulgated in the 2015 SIP Requirements Rule implementing the 2015 8-hour ozone NAAQS. The SIP for each ozone nonattainment area must contain NNSR provisions that: 1) set major source thresholds for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(I)(i)-(iv) and (a)(1)(iv)(A)(2); 2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); 3) consider any significant net emissions increase of NO<sub>x</sub> as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); 4) consider any increase of VOC emissions in Extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); 5) set significant emissions rates for VOC and NO<sub>x</sub> as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); 6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(I)-(2); 7) provide that the requirements applicable to VOC also apply to NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(8); 8) set offset ratios for VOC and NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(9)(ii)-(iv); and 9) require public participation procedures compliant with 40 CFR 51.165(i).

A. *South Coast Air Quality Management District (SCAQMD)*

The SCAQMD's longstanding SIP-approved NNSR program,<sup>6</sup> established in Regulation XIII, "New Source Review," of the SCAQMD's Rules and Regulations, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The SCAQMD's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the SCAQMD that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment

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<sup>6</sup> 61 FR 64291 (December 4, 1996); 64 FR 13514, (March 19, 1999); 71 FR 35157 (June 19, 2006); 83 FR 64026 (December 13, 2018).

designations. These documents are available in the docket for this action. The EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the SCAQMD's submittal because the current SIP-approved NSR program satisfies all the 2015 SIP Requirements Rule NNSR program requirements applicable to the South Coast Air Basin as an Extreme ozone nonattainment area, and all the requirements applicable to the Coachella Valley Air Basin as a Severe ozone nonattainment area.

B. *Imperial County Air Pollution Control District (ICAPCD)*

The ICAPCD's SIP-approved NNSR program,<sup>7</sup> established in Rule 207, "New and Modified Stationary Source Review," of the ICAPCD's Rules and Regulations, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The ICAPCD's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying that requirement. The submittal also includes a certification by the ICAPCD that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment designation. These documents are available in the docket for this action. The EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the ICAPCD's submittal because the current SIP-approved NSR program satisfies all the 2015 SIP Requirements Rule NNSR program requirements applicable to Imperial County as a Marginal nonattainment area.

C. *Ventura County Air Pollution Control District (VCAPCD)*

The VCAPCD's SIP-approved NNSR program,<sup>8</sup> established in Rule 26, "New Source Review," of the VCAPCD's Rules and Regulations, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its

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<sup>7</sup> 84 FR 44545 (August 26, 2019).

<sup>8</sup> 75 FR 1284 (January 11, 2010).

jurisdiction. The VCAPCD's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying that requirement. The submittal also includes a certification by the VCAPCD that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment designation. These documents are available in the docket for this action. The EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the VCAPCD's submittal because the current SIP-approved NSR program satisfies all the 2015 SIP Requirements Rule NNSR program requirements applicable to Ventura County as a Serious nonattainment area.

#### **IV. Proposed Action and Public Comment**

The EPA is proposing to approve SIP revisions addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the SCAQMD, the ICAPCD, and the VCAPCD. In support of this proposed action, we have concluded that our approval of the submitted 2015 ozone certifications for each district would comply with section 110(l) of the Act because the submittals will not interfere with continued attainment of the NAAQS in each district. The EPA has concluded that the State's submission fulfills the 40 CFR 51.1314 revision requirement and meets the requirements of CAA sections 110, 172(c)(5), 173, and 182(a)(2)(C), and the minimum SIP requirements of 40 CFR 51.165. If we finalize this action as proposed, our action will incorporate these certifications into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan – in part).

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**.

#### **V. Incorporation by Reference**

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the

EPA is proposing to incorporate by reference the certifications listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);



- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 7, 2022.

Martha Guzman Aceves,  
Regional Administrator,  
Region IX.

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